

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of Arbitration between:

TRI-K INDUSTRIES, INC.,

Petitioner,

— against —

SOPHIM,

Respondent.

Civil Action No. 07-6565 (CM) (DFE)

**DECLARATION OF PETER J. PIZZI IN
SUPPORT OF PETITIONER'S APPLICATION
FOR MOTION FOR JUDGMENT OF
DEFAULT AS AGAINST RESPONDENT
SOPHIM**

PETER J. PIZZI, hereby makes this declaration under penalty of perjury and, unless otherwise stated, based upon personal knowledge:

1. I am an attorney at the law firm of Connell Foley LLP, located at 85 Livingston Avenue, Roseland, New Jersey 07068, which represents Petitioner Tri-K Industries, Inc. ("Tri-K"), in this matter.

2. I submit this declaration is support of Petitioner's Application for Judgment of Default As Against Respondent Sophim.

3. Respondent Sophim is a French corporation located at Parc de la Cassine, 04310 Peyruis, France.

4. Respondent Sophim is not an infant, in the military, or an incompetent person.

5. As a foreign defendant, Tri-K was required to serve Respondent Sophim with the Summons and Petition to Confirm Arbitration in France, in accordance with the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters (the "Hague Convention"), 20 U.S.T. 361.

6. Pursuant to the Hague Convention, Respondent Sophim was served with the Summons, Notice of Petition, Petition, Affirmation, Memorandum of Law, and Rule 7.1 Statement. Service was effected through the Ministère de la Justice in France, which caused the documents in question to be personally delivered to Jacques Margnat, Director of Sophim on or about September 5, 2007. The foregoing is attested to in the Hague Convention Certificate filed at CM/ECF Docket Entry No. 5. *See Exhibit A.*

7. On or about November 7, 2007, the undersigned filed with the Office of the Clerk of Court of the United States District Court for the Southern District of New York, an Affidavit for Judgment by Default. *See Exhibit B.*

8. On or about November 7, 2007, the Clerk's Office issued a Clerk's Certificate of Default against Respondent Sophim. *See Exhibit C.*

9. On or about November 13, 2007, the Court entered an Order permitting modification of the Court's Individual Practice Rules to allow service of moving papers in support of Petitioner's motion for default judgment upon Respondent Sophim via Federal Express. *See Exhibit D.*

10. On or November 27, 2007, a copy of this Court's November 13, 2007 Order was forwarded to Respondent Sophim via Federal Express. *See Exhibit E.*

11. Per the Court's Individual Practice Rules, a copy of the moving papers is being served upon Respondent Sophim, along with the required notice accompanying the motion for default. Once served upon Respondent Sophim, a copy of the proof of service and notice will be filed with the Office of the Clerk of Court together with Petitioner's Motion for Default Judgment.

12. Respondent Sophim has failed to answer or otherwise respond following proper service in France. Default has already been entered against Respondent Sophim. Accordingly,

Petitioner Tri-K respectfully requests entry of default judgment against Respondent Sophim pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Local Rule 55.2(a).

Further this declarant sayeth not.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 28, 2007



Peter J. Pizzi

Peter J. Pizzi
CONNELL FOLEY LLP
85 Livingston Avenue
Roseland, NJ 07068
Telephone: (973) 533-4221
Facsimile: (973) 535-9217

Attorneys for Petitioner TRI-K INDUSTRIES, INC.

Exhibit A

**CERTIFICATE
ATTESTATION**

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,

1) that the document has been served *

1) que la demande a été exécutée

- the (date) -- le (date) : Le 25/10/07 à la Gendarmerie nationale de
- at (place, street, number) - à (localité, rue, numéro)

Dignes les Bains - Unité Cob Le Néas

- in one of the following methods authorized by article 5:
- dans une des formes suivantes prévues à l'article 5:

☐ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention*.
a) selon les formes légales (article 5, alinéa premier, lettre a)

☐ (b) in accordance with the following particular method:
b) selon la forme particulière suivante: _____

☐ (c) by delivery to the addressee, who accepted it voluntarily.*
c) par remise simple.

The documents referred to in the request have been delivered to:
Les documents mentionnés dans la demande ont été remis à:

- (identity and description of person)
- (identité et qualité de la personne)

M. Mangot Jacques Directeur de la Société Sophim

- relationship to the addressee family, business or other
- liens de parenté de subordination ou autres avec le destinataire de l'acte:

2) that the document has not been served, by reason of the following facts*:
2) que la demande n'a pas été exécutée, en raison des faits suivants:

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement*
Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint.

ANNEXES
Annexes

Documents returned:
Pièces renvoyées

PV + AR + Courrier

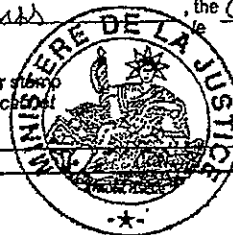
In appropriate cases, documents establishing the service:
Le cas échéant, les documents justificatifs de l'exécution:

Done at
Fait à

Paris

the 04/10/07

Signature and/or stamp
Signature et/ou cachet



U.S. Department of Justice
United States Marshals Service



REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

DEMANDE AUX FINS DE SIGNIFICATION OU DE NOTIFICATION À L'ÉTRANGER D'UN ACTE JUDICIAIRE OU EXTRAJUDICIAIRE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.
Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.

Identity and address of the applicant Identité et adresse du requérant

Peter J. Pizzi, Esq.
Connell Foley LLP
85 Livingston Avenue
Roseland, New Jersey
United States of America

Address of receiving authority Adresse de l'autorité destinataire

Ministère de la Justice
Bureau de l'Entraide
Judiciaire Internationale D4
13, Place Vendôme
75042 PARIS Cedex 01
France

The undersigned applicant has the honour to transmit – in duplicate – the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e., (identity and address)

Le requérant soussigné a l'honneur de faire parvenir – en double exemplaire – à l'autorité destinataire les documents ci-dessous énumérés, en la priant, conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, à savoir:
(identité et adresse)

Sophim, Parc de la Cassine
04310 Peyruls - France

- ☒ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.
a) selon les formes légales (article 5 alinéa premier, lettre a).
- ☐ (b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of article 5):
b) selon la forme particulière suivante (article 5, alinéa premier, lettre b):
- ☐ (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5):
c) le cas échéant, par remise simple (article 5, alinéa 2).

The authority is requested to return or to have returned to the applicant a copy of the documents and of the annexes with a certificate as provided on the reverse side.
Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte - et de ses annexes - avec l'attestation figurant au verso.

List of documents Énumération des pièces

Summons in A Civil Action
Notice of Petition
Petition
Affirmation
Memorandum of Law; Rule 7.1 Statement

Done at Roseland NJ USA, the 27 July 2007
Fait à , le

Signature and/or stamp
Signature et/ou cachet

*Delete if inappropriate
Rayer les mentions inutiles.

Form USM-94
Est. 11/77
(Formerly OBO-116, which was formerly LAA-116, both of which may still be used)

SUMMARY OF THE DOCUMENT TO BE SERVED
ÉLÉMENTS ESSENTIELS DE L'ACTE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.

{article 5, fourth paragraph}
(article 5, alinéa quatre)

Name and address of the requesting authority:
Nom et adresse de l'autorité requérante:

Peter J. Pizzi, Esq. Connell Foley LLP, 85 Livingston Avenue, Roseland, NJ 07068, United States of America

Particulars of the parties:
Identité des parties:

Tri-K Industries, Inc., 151 Veterans Drive, Northvale, NJ 07647, United States of America

JUDICIAL DOCUMENT
ACTE JUDICIAIRE

Nature and purpose of the document:
Nature et objet de l'acte:

Pour informer Sophim d'action Institué pour confirmer l'arbitrage et pour obtenir le jugement

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:
Nature et objet de l'instance, le cas échéant, le montant du litige:

Pour confirmer l'arbitrage attribuer le date du 8 mai 2007, et chercher le jugement de \$304,101.01, plus l'intér

Date and place for entering appearance:
Date et lieu de la comparution:

U.S. District Court, Southern District of New York, 500 Pearl Street, New York, New York 10007-1312

Court which has given judgment**:
Jurisdiction qui a rendu la décision:

(non applicable)

Date of judgment**:
Date de la décision:

(non applicable)

Time limits stated in the document**:
Indication des délais figurant dans l'acte:

20 jours de la réception de ces documents

EXTRAJUDICIAL DOCUMENT
ACTE EXTRAJUDICIAIRE

Nature and purpose of the document:
Nature et objet de l'acte:

Time limits stated in the document**:
Indication des délais figurant dans l'acte:

CERTIFICATE ATTESTATION

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,

- 1) that the document has been served *
1) que la demande a été exécutée

... the (date) ... le (date) ...
... at (place, street, number) ... à (localité, rue, numéro) ...

-- In one of the following methods authorized by article 5:
-- dans une des formes suivantes prévues à l'article 5:

☐ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention*.
a) selon les formes légales (article 5, alinéa premier, lettre a)

☐ (b) in accordance with the following particular method:
b) selon la forme particulière suivante:

☐ (c) by delivery to the addressee, who accepted it voluntarily.*
c) par remise simple.

The documents referred to in the request have been delivered to:
Les documents mentionnés dans la demande ont été remis à:

- (identity and description of person)
- (identité et qualité de la personne)

- relationship to the addressee family, business or other
- liens de parenté de subordination ou autres avec le destinataire de l'acte:

- 2) that the document has not been served, by reason of the following facts*:
2) que la demande n'a pas été exécutée, en raison des faits suivants:

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse
the expenses detailed in the attached statement*
Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais
dont le détail figure au mémoire ci-joint.

ANNEXES

Annexes

Documents returned:

Pièces renvoyées

In appropriate cases, documents establishing the service:
Le cas échéant, les documents justificatifs de l'exécution:

Done at Roseland NJ USA, the 27 July 2007
Fait à , le

Signature and/or stamp
Signature avec cachet

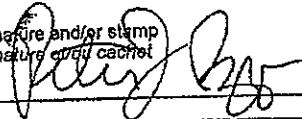


Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of Arbitration between:

TRI-K INDUSTRIES, INC.,

Petitioner,

– against –

SOPHIM,

Respondent.

Civil Action No. 07-6565 (CM) (DFE)

**AFFIDAVIT FOR
JUDGMENT BY DEFAULT**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Peter J. Pizzi, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am associated with the firm of Connell Foley LLP, attorneys for petitioner in the above-entitled action. I am familiar with all the facts and circumstances in this action.

2. I make this affidavit pursuant to Rule 55.1 and 55.2(a) of the Civil Rules for the Southern District of New York, in support of petitioner's application for the entry of a default judgment against respondent.

3. This is an action to recover money damages owed by respondent to petitioner for satisfaction of an arbitration award entered in favor of petitioner on May 8, 2007.

4. The respondent is not an individual but rather a French corporation.

5. Jurisdiction of the subject matter of this action is based on diversity of citizenship jurisdiction.

6. This action was commenced on July 20, 2007 by the filing of the summons and complaint. A copy of the summons and complaint was served on the defendant on September 5, 2007 by personal service on Jacques Margnat, Director of respondent Sophim, in accordance with the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters 20 U.S.T. 361, (STATE SPECIFICALLY HOW SERVICE WAS MADE ON DEFENDANT) and proof of service by the Special Process Server was filed. The respondent has not answered the complaint and the time for the respondent to answer the complaint has expired.

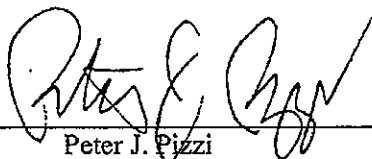
7. This action seeks judgment for the liquidated amount of \$247,564.00 plus interest at 3.97 % from May 8, 2007 , for a total as of December 9, 2007 of \$253,380.19, as shown by the annexed Statement, which is justly due and owing, and no part of which has been paid except as therein set forth.

8. The disbursements sought to be taxed have been made in this action or will necessarily be made herein.

WHEREFORE, petitioner requests the entry of Default and the entry of the annexed Judgment against respondent.

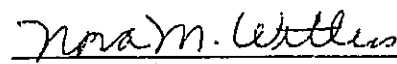
Dated: Roseland, New Jersey

November 6, 2007



Peter J. Pizzi

Sworn to before me this 6 day of November, 2007.



Notary Public

NORA M. WELTEN
A NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES MARCH 31, 2011

IF DEFENDANT IS AN INDIVIDUAL, ATTORNEY'S AFFIDAVIT MUST CONTAIN A STATEMENT THAT HE OR SHE IS NOT A MINOR, MENTALLY INCOMPETENT NOR IN THE MILITARY SERVICE OF THE UNITED STATES.

ANNEXED STATEMENT ON INTEREST DUE AND OWING
TRI-K V. SOPHIM 07-CV-6565 (CM)

Pursuant to 28 U.S.C. § 1961(a), the pre-judgment interest rate reflected in the proposed judgment (3.97%) is the weekly average one year constant maturity treasury yield, for the week ending October 26, 2007, as reported on the website of the Board of Governors of the United States Federal Reserve, <http://www.federalreserve.gov/releases/H15/Current/>. The following chart shows the pre-judgment interest earned on the judgment amount of \$247,564.00 for 216 days of 2007 (May 8, 2007 -- December 9, 2007).

Year	Applicable Interest Rate	Days of Interest	Interest
2007	3.97%	216	\$5,816.19

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In the Matter of Arbitration between

TRI-K Industries, Inc.,

Plaintiff,

07 Civ. 6565 (cm) (DFE)

- against -

CLERK'S CERTIFICATE

Sorhim,

Defendant.

-----X

I, J. MICHAEL MCMAHON, Clerk of the United States District Court for

the Southern District of New York, do hereby certify that this action commenced on (date) July 20, 2007

with the filing of a summons and complaint, a copy of the summons and complaint was served
on defendant by serving Jacques Margnat, Director of Respondent Sorhim, in accordance with the
Hague Convention for Service (name) Abroad of Judicial and Extra-Judicial
Documents in Civil and Commercial Matters 20 U.S.T. 361
(STATE SPECIFICALLY HOW SERVICE WAS MADE ON DEFENDANT), and proof of

such service thereof was filed on (date) Sept. 5, 2007 / Oct. 15, 2007.

I further certify that the docket entries indicate that the defendant has not filed an
answer or otherwise moved with respect to the complaint herein. The default of the defendant is
hereby noted.

Dated: New York, New York

Nov 7, 2007

J. MICHAEL MCMAHON
Clerk of the Court

By: 

Deputy Clerk

Exhibit D

NOV. 3, 2007 3:54 PM

NO. 579 P. 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of Arbitration between:

TRI-K INDUSTRIES, INC.,

Petitioner,

— against —

SOPHIM,

Respondent.

Civil Action No. 07-6565 (CM) (DFE)

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/13/07

ORDER PERMITTING MODIFICATION OF
THE COURT'S INDIVIDUAL PRACTICE RULES

THIS MATTER having come before the Court by application of petitioner, Tri-K Industries, Inc. (hereinafter "Tri-K"), to confirm an arbitration award entered in favor of petitioner, and respondent Sophim having been duly served pursuant to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters 20 U.S.T. 361, on September 5, 2007, and respondent having failed to answer or otherwise respond, and petitioner having already filed with the Court an affidavit for entry of default against respondent and now seeks to move for default judgment against respondent, and for good cause having been shown,

IT IS on this 13 day of November, 2007,

ORDERED that the Court's Individual Practice Rules are modified and petitioner Tri-K is permitted to serve via Federal Express its moving papers in support of its motion for default judgment upon respondent Sophim; and it is further

NOV. 9. 2007 3:54PM

NO. 579 P. 5

ORDERED that the within Order be served on respondent Sophim within 22 days of the date of this Order.

DATED:


HON. COLLEEN MCMAHON, U.S.D.J.

Exhibit E

CONNELL FOLEY LLP
ATTORNEYS AT LAW

85 LIVINGSTON AVENUE
ROSELAND, N.J. 07068-3702

(973) 535-0500

FAX: (973) 535-9217

JERSEY CITY OFFICE

HARBORSIDE FINANCIAL CENTER

2510 PLAZA FIVE

JERSEY CITY, N.J. 07311-4029

(201) 521-1000

FAX: (201) 521-0100

NEW YORK OFFICE

888 SEVENTH AVENUE

NEW YORK, N.Y. 10106

(212) 262-2390

FAX: (212) 262-3118

PHILADELPHIA OFFICE

1500 MARKET STREET

PHILADELPHIA, PA 19102

(215) 246-3403

FAX: (215) 665-5727

MICHAEL J. PALOMBO*
M. TREVOR LYONS*
CRAIG S. DEMARESKI*
ELIZABETH W. EATON
JOSEPH M. MURPHY
W. NEVINS MCCANN*
JASON E. NARAY*
THOMAS J. O'LEARY*
MITCHELL W. TARASCIO
MICHAEL A. SHADLOCK
OWEN C. MCCARTHY
PATRICIA A. LEE*
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MICHELE T. TANTALLA*
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AMY TODD*
KRISTYN A. RINALDI*
NICOLE B. DORY*
PATRICK E. DUKING*
CHRISTIAN J. JENSEN*
JOSEPH A. VILLANI, JR.
LEE B. WILSON

PLEASE REPLY TO ROSELAND, N.J.

JOHN A. FINDAR (1969)
GEORGE W. CONNELL (2005)
ADRIAN M. FOLEY, JR.
GEORGE J. KENNY*
KENNETH F. KUNZMAN
SAMUEL D. LORD
RICHARD D. CATEMACCI
RICHARD J. RADOLATO*
PETER D. MANAHAN
JOHN B. MURRAY
MARK L. FIEDER
KEVIN J. COAKLEY
WILLIAM H. GRAHAM*
THOMAS S. COSMA
KATHLEEN S. MURPHY
PATRICK J. MCAULEY
PETER J. PIZZI*
KEVIN R. GARDNER
ROBERT E. RYAN
MICHAEL X. MCBRIDE*
JEFFREY W. MORYAN
JOHN K. BENNETT
PETER J. SMITH*
BRIAN G. STELLER
PHILIP F. MCGOVERN, JR.
KAREN PAINTER RANDALL
LIZA M. WALSH
JOHN P. LACEY
TIMOTHY E. CORRISSON*
ERNEST W. SCHOELLKOPF*
PATRICK J. HUGHES**

JAMES C. MCCANN*
JOHN D. CROMIE
ANGELA A. IUSO*
CLARENCE SMITH, JR.—
WILLIAM T. MCCLOIN*
BRENDAN JUDGE
DAREN S. MCNALLY*
STEPHEN V. FALANGA*
JEFFREY L. O'HARA
TRICIA O'REILLY*
ANTHONY E. VITIELLO*
MARC D. HAEFNER
JONATHAN P. MCHENRY
JAMES P. RHATICAN*
MATTHEW W. BAUER*
JOSEPH C. DELASIO
BRAD D. SHALIT*

COUNSEL
JOHN W. BISSELL
JOHN B. LAVECCHIA
VIRGINIA M. EDWARDS*
FRANCIS E. SCHILLER*
EUGENE P. SQUEO*
BERNARD M. HARTNETT, JR.*
NOEL D. HUMPHREYS*
ANTHONY ROMANO II*
CHARLES J. HARRINGTON III*
STEVE BARNETT*
KARIN L. SPALDING*
JOEL ANNE HUDSON*
CORNELIUS J. O'REILLY*
RICHARD A. JAGEN

*ALSO ADMITTED IN NEW YORK
*ALSO ADMITTED IN PENNSYLVANIA
—ONLY ADMITTED IN NEW YORK

WRITER'S DIRECT DIAL

November 27, 2007

Via Federal Express

Sophim

Parc de la Cassine, 04310

Peyruis, France

Re: Tri-K Industries, Inc. v. Sophim
Civil Action No. 07-cv-6565

To Whom It May Concern:

This firm is counsel to petitioner Tri-K Industries, Inc. ("Tri-K"). Per the Court's directive, enclosed please find a copy of the Court's Order Permitting Modification of the Court's Individual Practice Rules, entered November 13, 2007.

Sincerely,


Peter J. Pizzi

Enclosure
PJP/hdr

1894705-01

NOV. 9. 2007 3:54PM

NO. 579 2, 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of Arbitration between:

TRI-K INDUSTRIES, INC.,

Petitioner,

— against —

SOPHIM,

Respondent.

Civil Action No. 07-6565 (CM) (DFE)

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/13/07

ORDER PERMITTING MODIFICATION OF
THE COURT'S INDIVIDUAL PRACTICE RULES

THIS MATTER having come before the Court by application of petitioner, Tri-K Industries, Inc. (hereinafter "Tri-K"), to confirm an arbitration award entered in favor of petitioner, and respondent Sophim having been duly served pursuant to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters 20 U.S.T. 361, on September 5, 2007, and respondent having failed to answer or otherwise respond, and petitioner having already filed with the Court an affidavit for entry of default against respondent and now seeks to move for default judgment against respondent, and for good cause having been shown,

IT IS on this 13 day of November, 2007,

ORDERED that the Court's Individual Practice Rules are modified and petitioner Tri-K is permitted to serve via Federal Express its moving papers in support of its motion for default judgment upon respondent Sophim; and it is further

NOV. 9. 2007 3:54PM

NO. 579 P. 5

ORDERED that the within Order be served on respondent Sophim within 20 days of the date of this Order.

DATED:


HON. COLLEEN MCMAHON, U.S.D.J.